

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBERS: 02-0366 AND 02-0367**

Sales and Use Taxes  
Calendar Years 1998, 1999, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales Tax – Availability of additional information**

**Authority:** IC 6-8.1-4-2

The taxpayer protests that certain information and documentation relevant to the audit assessment became available after the close of the audit.

**II. Use Tax – Auditor's method of calculating tax**

**Authority:** IC 6-8.1-4-2

The taxpayer protests the assessment of use tax on the total amount of expense items purchased during the audit period.

**III. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

The taxpayer rents and leases cranes, man-lifts, and various other lifting devices to contractors and commercial enterprises. The department audited the taxpayer. With regard to the sales tax, the auditor requested specific information and documents from the taxpayer. The taxpayer failed to provide the information and documents within a reasonable period of time. The auditor calculated a sales tax assessment based on the best information available.

With regard to the use tax, the auditor requested that specific invoices be made available for examination. The taxpayer failed to provide these invoices within a reasonable period of time. The auditor calculated a use tax assessment based upon the total amounts of certain expense accounts selected from the taxpayer's chart of accounts.

In a letter dated July 17, 2002, the taxpayer protested the sales tax and use tax assessments asserting that the requested documentation had become available. In a letter dated March 12, 2003, the taxpayer protested the imposition of penalty. Following review and discussion, the department and the taxpayer resolved the sales and use taxes issues. Accordingly, a supplemental audit report was prepared. In a letter dated April 23, 2003, the taxpayer withdrew its protest regarding the sales and use taxes subject to the proposed supplemental adjustments. However, the taxpayer continued to protest the imposition of penalty.

**I.     Sales Tax - Availability of additional information**

According to the auditor, specific documentation was requested from the taxpayer. This documentation was not provided. After allowing a reasonable period of time for the submission of the requested information, the auditor had no choice but to complete the audit report based on the best information available.

In its letter dated July 17, 2002, the taxpayer protested the auditor's use of the "best information available" approach asserting that the requested documents were now available for review.

IC 6-8.1-4-2 (a) (6) states:

The division of audit may: ... employ the use of such devices and techniques as may be necessary to improve audit practices.

Given the absence of financial records during the audit examination, the auditor was justified in basing the assessment on the best information available.

The auditor determined that the information contained in the documents was reasonable, and, accordingly, a supplemental audit was prepared. In a letter dated April 23, 2003 the taxpayer withdrew its protest of this issue based on the proposed supplemental audit adjustments.

**FINDING**

The taxpayer has withdrawn its protest of this issue.

**II.    Use Tax – Auditor's method of calculating tax**

As part of the audit examination, the auditor requested a sample of purchase invoices for review. This sample of invoices was to be used to determine projected use tax liabilities or refunds. The invoices were not provided. After allowing a reasonable period of time for the submission of the

requested information, the auditor had no choice but to prepare the projection and complete the audit report based on the best information available.

In its letter dated July 17, 2002, the taxpayer protested that it did not agree with the auditor's method of calculating the use tax liability. Subsequently, the taxpayer submitted the requested invoices to the auditor for review. In accordance with the previously quoted IC 6-8.1-4-2 (a) (6), the auditor was justified in basing the assessment on the best information available.

The auditor determined that the information contained in the documents was reasonable, and, accordingly, a supplemental audit was prepared. In a letter dated April 23, 2003 the taxpayer withdrew its protest of this issue based on the proposed supplemental audit adjustments.

### **FINDING**

The taxpayer has withdrawn its protest of this issue.

### **III. Tax Administration – Penalty**

The taxpayer protests the imposition of penalty based upon the following:

- Ownership of the taxpayer changed during the audit period.
- The audit was the first sales and use taxes audit of the taxpayer since its incorporation.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Regarding the first argument, the Department acknowledges the confusion created by changes in ownership and corporate reorganization. However, the possibility of such events should have been anticipated by the taxpayer; procedures should have been in place to assure that tax obligations were timely paid.

The argument that this audit was the taxpayer's first audit since incorporation is not sufficient to justify the waiver of penalty. A taxpayer doing business in Indiana assumes the responsibility of familiarizing itself with the Indiana Code, Indiana Administrative Code, and the various information bulletins and other pronouncements issued by the Department. This learning process should begin prior to the outset of doing business in Indiana, not after the taxpayer has been notified that it is a candidate for audit. The taxpayer's failure to understand and apply

Indiana tax law to its Indiana transactions clearly indicates negligence. The imposition of penalty is appropriate.

**FINDING**

The taxpayer's protest is denied.